

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CRIMINAL CASE NO. 2:09cr18

UNITED STATES OF AMERICA,

vs.

RICHARD SHANNON UNDERWOOD.

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ORDER

THIS MATTER is before the Court on the Defendant's appeal of the Magistrate Judge's Order denying his motion for a psychiatric examination. [Doc. 44].

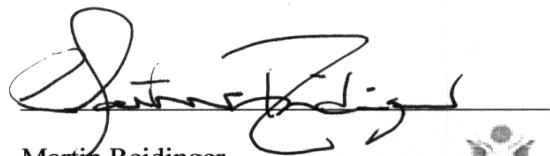
The Magistrate Judge conducted a hearing on the Defendant's motion for a psychiatric examination on January 19, 2011. This hearing was recorded and was later transcribed. [See Doc. 49]. During the hearing, however, the Magistrate Judge sealed the proceeding so as to provide defense counsel the opportunity to disclose to the Court confidential attorney-client communications which counsel believed demonstrated the Defendant's lack of competency. The sealed portion of this hearing was not recorded nor transcribed, and thus, the Court has no record of counsel's proffer and/or the Defendant's statements to the

Magistrate Judge. Without such a record, the Court is unable to determine whether the Magistrate Judge abused his discretion in denying the motion for examination.

Accordingly, **IT IS, THEREFORE, ORDERED** that within seven (7) days of the entry of this Order, defense counsel shall submit, *ex parte*, a written statement of the proffer made to the Magistrate Judge during the sealed portion of the January 19, 2011 hearing.

IT IS SO ORDERED.

Signed: May 13, 2011


Martin Reidinger
United States District Judge

